

Appl. No.: 09/932,621  
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Off. Act. Dated: 10/28/2008

### **REMARKS/ARGUMENTS**

Reconsideration of this application is respectfully requested in view of the discussion presented herein.

1. Terminal Disclaimer filed July 16, 2008.

Terminal disclaimer filed July 16, 2008 was not accepted. Examiner asserts that it does not comply with 37 CFR 1.321(b) because the power of attorney filed June 2, 2005 lists more than ten patent practitioners and thus does not conform to 37 CFR 1.321(b).

A new Power of Attorney and Terminal Disclaimer are filed herewith to overcome the above objections.

2. Objection to Claim 19.

Claim 19 was objected to by the Examiner for reciting the limitation "*the group of broadcast music information*", for which there was considered no antecedent basis.

The claim has been amended to recite "*a group of broadcast music information*", instead of "*the group of broadcast music information*".

3. Rejection of Claims 1-27, 30-32, 34-37, and 41-43 under 35 U.S.C. § 103(a).

Claims 1-27, 30-32, 34-37, and 41-43 were rejected under 35 U.S.C. § 103(a) as being obvious over Sasaki et al. (U.S. Publ. App. No. 2002/0077988) in view of Lehtonen (U.S. Publ. App. No. 2001/0049262), and further in view of Hans et al. (U.S. Publ. App. No. 2002/0120577).

After carefully considering the grounds for rejection, the Applicant responds as follows. The above group of claims includes independent Claims 1, 20, 31, 42, and 43.

(a) Claim 1. Claim 1 is an independent claim directed to a data marker integrated device communication system.

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### **What is a “Data Marker Integrated Device”**

As all the selected references are being put forth as a “*data marker integrated device*”; it is worthwhile to once again describe what Applicant describes as a “*data marker integrated device*”. This has been understood about every other office action, and then somehow prosecution reverts back to a ‘prehistoric’ context looking at the word “marking” in its most generic sense and ignoring other clarifying text within the claims and the teachings of the specification.

The bookmarking of broadcast clips provided by the data marker integrated device has already been properly deemed patentable by the USPTO as evidenced by the patents already issued to the Applicant. Let’s still look more closely at “*data marker integrated device*”.

Why would a “*data marker integrated device*”, according to the present invention, be beneficial to a user? The specification speaks clearly about this and provides examples wherein a user listens to (and/or views) a broadcast clip (obviously, as it is being broadcast!) and wants to get additional information about that clip. Note the example shows the user listening to a radio broadcast. The user is not previewing audio content on a web-site; otherwise they could just select it and download it. The user is not looking at meta-data for an audio file - as again, this indicates the audio file itself is available for download. The user does not otherwise have any direct link to a music system which is aware of what has just been broadcast - as again, then there would be no need for bookmarking the clip during the broadcast.

What in the claim provides distinctions about this data marking? The claim even further clarifies this “*data marker integrated device*” term in that the device is “*configured to store a data mark in response to bookmarking of a broadcast clip*”. **One cannot thus consider ANY prior art as being a “*data marker integrated device*”, unless it is configured for storing a data mark in response to bookmarking of a broadcast clip.** However, that is exactly what continues to happen. The Examiner keeps attempting to define “data marker” in a way that fits spurious prior art, while ignoring

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clear recitations in the claims and teachings within the specification.

“Broadcast” can only be understood to mean a one-to-many radio-frequency transmission; it is not an applicable term to a direct one-to-one connection, a network connection, or the like. The availability of these other means would make the need for the “bookmarking” of broadcast clips unnecessary. The bookmarking takes place while the broadcast is taking place; otherwise, what would one be bookmarking?

There is no discussion of any form of network connection or any other connection to a database of media clips when the bookmarking is performed. All of the art recited as being a “*data marker integrated device*” are connected to a database or other content distribution in which there is no need for a bookmark, because (1) there is nothing to be bookmarked, and (2) they are directly accessing a database or repository wherein they can just select the items desired.

The term “*bookmarking*” is further understood in the instant application as a way of obtaining some information from a broadcast that can be later looked up toward creating a playlist of the clips that the user heard and bookmarked during their broadcast.

Consequently, it is clear from the above that none of the cited references can be equated to a “data marker integrated device” as that term is identified within Applicant’s claims. The following will continue discussing the shortcoming of specific support for the rejection.

### **Sasaki References NOT a Data Marker Device**

The data marker integrated device recited in Claim 1, and in the other claims, is equated with the **digital rights management system** of Sasaki; however, Sasaki cannot be considered to provide the data marking services as recited in the Applicant’s claims.

As discussed at length and understood in prior responses in view of the rejections being withdrawn, and in view of the previously issued patents to the Applicant for other data marking integrated devices, a data marker integrated device is configured

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for bookmarking specific content without the need to access that content, or to be connected to a database of said content. The marking is solely in response to the broadcast of that content. Clearly, if the music or other content were directly accessible, AS IN SASAKI, then there is NO NEED to go through the bookmarking process and then the process of figuring out what content should be associated with the bookmark. It will be noted that the data marking device, by definition, does not have direct access to the media which is being broadcast. The claim refers to bookmarking of a “*broadcast clip*”, that is, one that is currently being output to a user. Again, Sasaki has nothing to do with performing such bookmarking. The following briefly discusses Sasaki, and then the specifically cited portions of Sasaki will be discussed. It is clear that the reference is improperly applied as a “*data marker integrated device*” which performs “*bookmarking of broadcast clips*.”

As stated in the abstract, Sasaki is directed to “Systems and method of distributing digital content.” This system is able to distribute content to portable media devices. Such devices are also NOT “*data marker integrated devices*”, as that phrase is understood. A portable media device is configured for accessing a content repository and downloading and playing that content. It does not perform “*bookmarking of a broadcast clip*” as recited in the claims.

Sasaki is directed principally at the licensing manager 22, seen explicitly from FIG. 1 of that reference and reflected in each of the other figures and throughout the specification. The elements surrounding the “license manager”, such as “*content owner*”, “*commercial distributor*”, “*licensed user*”, and “*unlicensed user*”, are not even processes, thus, they would not be statutory aspects for receiving patent protection. Regarding the “licensing manager”, the abstract states: “*the license manager is configured to associate digital content with meta-data for controlling wireless transmission and rendering of digital content from one portable media device to another. A content tracking and incentives system that encourages commercial distributors, broadcasters and users to distribute digital content to new potential customers is also*

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*described.*” From this, it is clear that the objects and operating principles of the present invention have little to do with that which is claimed in the instant application.

In support of Sasaki as a “*data marker integrated device*”, the rejection makes a number of errors in interpretation. The generation of meta-data in the content header of digital content as given in paragraph [0032] is considered to equate with the claim element since it identifies digital content. However, such an assertion indicates that (1) the specific teachings of Applicant’s claims and the meaning given to the terms by the specification are not being properly considered, and (2) the statement is equivalent to equating any form of identification of media to be this form of data marking. It is improper to base the examination on one or two selected words taken in isolation and without considering the invention as a whole and thus properly construing the elements therein.

The teachings of paragraph [0032] can be immediately disqualified with respect to the claimed invention, because it discusses a “*Commercial distributor 24*” which “*may offer the digital content for sale to users in a variety of different ways.*” Where in this is there any evidence of the bookmarking of a broadcast clip? Why would one need to perform bookmarking if they (1) already knew what media they wanted, and (2) were already connected to a “*commercial distributor 24*” able to download the media? These aspects of the rejection make so sense whatsoever.

Similarly, the other paragraphs relied on in support of Sasaki as a data marker integrated device similarly provide only reference to known aspects relating to the selecting and transferring of files. Aspects relating to the marking of meta-data to control content distribution has nothing to do whatsoever with “*bookmarking of a broadcast clip*” as recited in the claim. Furthermore, the present invention is not directed at limiting content access through tracking (marking) according to digital rights management techniques. The claims are directed to communicating the broadcast clip bookmarks through a first and second wireless communication connection with a server that can determine which clips were broadcast in response to the bookmarks and

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generating a playlist for the user. There is no further action. The user is free to take the playlist and connect to a system like that of Sasaki for obtaining copies of the media which was originally broadcast; however, that is not the object of the instant application. Sasaki is thus wholly distinct and divergent from the present invention.

Other elements of the claims are treated on a similar basis, ignoring the aspects and context of Applicant's claims as well as the meaning and benefits as recited in the instant specification. For example, with regard to the first and second wireless communication connection of the instant application, these fulfill specific beneficial purposes in the instant invention, in which the typically electronically simple data marker device can use another device to intermediate the communication of the bookmarked broadcast clips to a server. However, all of this context is ignored in equating these aspects to paragraphs [0036] and [0046], which respectively address connection of a media device to "*commercial distributor 24*" in paragraph [0036], and with an associated licensing management process "*to obtain a license by purchasing a digital work*" as related in paragraph [0046]. These paragraphs do not even disclose the wireless connections themselves, let alone the specific configuration and interrelation as recited in Applicant's claims.

Thus, it is clear that the Sasaki reference shares only some similar words and does not teach the recited aspects of Applicant's claims.

#### **Lehtonen Reference is NOT a Data Marker Device**

The Lehtonen reference, was previously cited during the prosecution of the instant application. Lehtonen teaches a "*Hands-Free Function*" and provides no support whatsoever for a "*data marker integrated device*" as that term is recited in Applicant's claims and as is well understood from Applicant's specification.

The contention of Lehtonen being a "*data marker integrated device*" is on the basis of it being "*configured for retrieving data.*" Once again, Examiner cites isolated language from the claims while ignoring other aspects, and then attempts to redefine those terms in relation to the prior art which is at hand.

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Applicant respectfully points out that **the rejection completely fails with regard to equating the storage of music files within the headset of Lehtonen as being the same as “data marking”** in response to “*bookmarking of a broadcast clip*” as recited in the claims. None of the cited paragraphs [0007], [0030], [0032], [0047], or [0056], teach anything about marking of broadcast clips. A number of clear distinctions are wholly ignored in characterizing the claim elements taught within the instant application.

Data marking is not a process of recording music, even if that music is “marked” in some manner to select downloading. I can use a pen to mark notes on the jacket of a CD, but this would not make my pen a “data marker integrated device” as recited in the instant claims, because there are many other limiting phrases which accompany the claims, as well as teachings in the specification. The Examiner’s understanding of the terms is to be based on the teachings in the instant application. It is not the word “mark” which renders patentability to Applicant’s subject; Applicant is not attempting to patent all manner of things which could be generally construed as a form of marking.

Applicant notes also that the patentability of the “*Data Marker Integrated Device*” has already been well established in view of the patents issued already for this technology. The present invention embodies that functionality in a new way, which provides a number of additional benefits with regard to highly portable devices which need not have independent internet access.

Patentability is to be determined on the basis of SPECIFIC structures and implementations, and not generalizations, in particular, generalizations based on hindsight in view of the teachings of the present invention and not on the references themselves.

Data marks are only needed in Applicant’s data marking device BECAUSE THE MEDIA FILES ARE NOT OTHERWISE ACCESSIBLE OR SELECTABLE, except by the user trying to remember the title and author (if those have even been announced by the disc-jockey or station). These are CRITICAL ASPECTS to understanding the present invention. The objects of Lehtonen and all the other cited references HAVE NO NEED

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OF DATA MARKING OF BROADCAST CLIPS as those terms are well understood in the industry and made known in Applicant's specification.

Music can be recorded from the radio (a broadcast) without any interaction with a server. In addition, data for music recording is being received by the headset of Lehtonen, and not being sent from the first device for receipt by the second device. Furthermore, it will be noted that "data marks" taken by the data marking device of the Applicant cannot be "played" on the data marking device. The marks only provide a means by which content elements may be identified by an external means, in particular, by the server device of the instant application, after the marks have been passed through the connection made with the second wireless device. Still further, in a recording process, there is no retrieval of information corresponding to said marked data. These shortcomings arise at the very core of the rejection. We turn now to the specific details of the rejection.

The cited sections of Lehtonen, including recited elements of FIG. 2 (element 21); FIG. 3 (element 21); paragraphs [0009], [0011]-[0014], [0016], and [0039], refer to a media player which, in response to having a connection to a source of audio files, can select elements for download or playback. The rejection mischaracterizes Lehtonen in relation to how these aspects are taught in Applicant's specification.

In mischaracterizing the teachings of Lehtonen into a *"data marker integrated device communication system"*, the rejection fails to consider the meaning of this phrase as clearly taught by the relevant portions of Applicant's specification. Applicant strongly contends that upon even a casual reading of Applicant's specification, the phrase *"data marker integrated device"* would by no means be equated to the hands-free headset of Lehtonen (Refer to MPEP 2111) by one of ordinary skill in the art.

The distinction with regard to data marks and bookmarking are brought out repeatedly in the Applicant's specification, such as on page 1, lines 23-31:

*Sony Corporation and its U.S. subsidiary, Sony Electronics, Inc., introduced an electronic music marker device which is capable of "bookmarking" a music clip while being played on a radio and is capable of recalling the information related*



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*to the bookmarked music clip such as the name of the song, the artist, the album containing the song and so on. Using the electronic music marker device, a user can conveniently access the music clip information that the user listened to on the radio at a later time **without the need to memorize the information or wait hopefully for the disc jockey on the radio to provide that information.***  
(emphasis added)

The first line of the claim even explicitly describes what a “*data marker integrated device*” is configured to perform, and that is “a data marker integrated device configured to store a data mark in response to bookmarking of a broadcast clip”. Thus, Lehtonen cannot be a “*data marker integrated device communication system*” based on the ability of the Lehtonen headset to retain songs or even to record music. Not surprisingly, this aspect of the language of Claim 1 is not considered in citing Lehtonen as a “*data marker integrated device communications system*.”

In a prior Office Action, the Examiner was clear to indicate that “*bookmarking*” was interpreted as “*user storing of a file*”. However, it is well understood that an Examiner is not to decide on their own interpretations for elements when there exists abundant information from what is known in the field and, more pointedly, to what is described in the specification. Everything in the claims is to be interpreted with respect to the invention as a whole and the teachings of the specification.

The difference between storing a “*data mark in response to bookmarking of a broadcast clip*” and the storing of MP3 files, as in Lehtonen, is clear. The Examiner interprets the “*data mark*” recited in the claim as equivalent to an “*index*” as described by Lehtonen in relation to the storage of files thereupon, as seen by the following paragraph.

Lehtonen paragraph [0039]:

“FIG. 5b illustrates a WML page showing the contents of a memory card inserted in the headset as an index. The index comprises information on the files/pieces of music stored in the memory card. In addition to the name of the file/piece of music ‘SONG NAME 1, SONG NAME 2, SONG NAME 3, ...’, said information may include for example the size of the file/piece of music. In the case of FIG.

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5b, the size of the piece of music SONG NAME 1 is 2.14 megabytes, that of SONG NAME 2 4.51 megabytes and that of SONG NAME 3 3.38 megabytes.”

However, the term “*index*” is a common database term relating to a first hierarchical-level relational primitive, and has no relevance to the “*data mark in response to bookmarking of a broadcast clip*”. Lehtonen provides the ability, as in a conventional MP3 player, to store songs and to list those songs contained in its memory with information such as name, size, and/or duration; which are aspects of a conventional file or media storage system. Lehtonen is not even communicating these indexes, such as through multiple wireless means, to a remote server for retrieving playlist data. In fact, Lehtonen clearly teaches away from retrieving playlist information, because the indexes it retains point to music already contained within the player of Lehtonen, such as in the memory card of Fig. 5b. Accordingly, one of ordinary skill in the art will readily recognize that Lehtonen CANNOT be construed as a data marker device as recited by Applicant’s claims. Thus, Lehtonen cannot be used as a primary reference against Claim 1 or any other claims of the instant application.

Elements of Lehtonen are improperly construed as being related to aspects of the “*data marker integrated device*” in Claim 1. First, nothing is described with regard to “(Fig. 2, 21; Fig. 3, 21)”, including any use of data marking, and in particular, to a “*data mark in response to bookmarking of a broadcast clip*”. Element 21 in each of these figures is referred to by Lehtonen as “*headset 21*”, which in paragraph [0026] is described as “*The headset 21 comprises two stereo earpieces 23 (right and left), each of which comprises a speaker 24 for stereo playback of music. The headset 21 also comprises a microphone 25, a headband 26 and an electronics module 27.*” Applicant is unable to find anything regarding the Lehtonen headset which could possibly be construed by one of ordinary skill in the art as being “*a data marker integrated device configured to store a data mark in response to bookmarking of a broadcast clip*”.

The rejection also misconstrues the bookmarking process as “*bookmarking of a clip (e.g., user storing a file, such as a multimedia file, audio/video file, MP3 music file)*”

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(section 0008, 0009, 0011-0014, 0016, 0039, 0041)". However, as discussed above, there is no basis on which the bookmarking of content for storing a data mark in response to bookmarking of a broadcast clip, is or could be identical to storing of one of these music files by Lehtonen, or indexes of the files.

Additional problems are found in the body of the rejection in that Lehtonen does not communicate "data marks" at all, and certainly does not communicate data marks through wireless devices.

In addition, the aspects of the server element in Claim 1 are grossly mischaracterized within the rejection. Paragraphs [0035]-[0039] and [0041] within Lehtonen are said to support "*retrieving playlist data in response to receipt of said data mark from said first device*". However, the referenced sections do not deal with either the use of data marks stored in response to bookmarking of a broadcast clip, or to the retrieval of playlists. The relied-upon sections of Lehtonen only disclose that wireless communication takes place, and in paragraph [0041] of Lehtonen, that music can be communicated to the device. Furthermore, Lehtonen does not describe a similar server configuration, nor is anything described within regard to user accounts on the server.

#### **Hans Reference is NOT a Data Marker Device**

Another digital rights content management system is then cited as being a "*data marker integrated device*" equated with the present invention. Similarly, the support for the rejection discusses nothing in regard to aspects such as how the device can "*store a data mark in response to bookmarking of a broadcast clip.*" Furthermore, why bookmarking would be necessary if ALL the desired files were accessible to the user? Bookmarking of broadcast clips is only beneficial because the user DOES NOT have direct access to a database – the user is listening (and/or watching) a broadcast clip for which they desire additional information.

Nothing is cited from the Hans reference aside from an ability to select which content is to be downloaded and the playing of that content. None of the cited portions of Hans refer to anything which remotely resembles "*bookmarking of a broadcast clip.*"

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### **Shortcomings of Combination**

Because no reference teaches the “*data marker integrated device*” of the present invention, which stores data marks in response to bookmarking of a broadcast clip, it is clear that the combination of these references must also lack such a teaching. The combination does not lead to creating a device which performs what is recited in Applicant’s claims.

Other shortcomings are also abundantly clear, including that each of the recited references is directed to different objects and operating principles than that recited for the present invention. None of these references are in any way directed to allowing the bookmarking of broadcast clips for being later looked up to get information about the clips which were played.

There is no teaching, suggestion or motivation found in these references which would lead one of ordinary skill in the art to make any combination to obtain that which is taught by the instant application.

The combination is put forth without specific structural recitations about how the hardware and software elements would be combined, which is necessary to support such a combination.

The combination is asserted with respect to hindsight and not in view of any teachings, suggestions, or motivations cited in the references themselves or in the general knowledge in the art, as required in the examination process.

Support for the rejection is based on dissecting the elements of the claimed invention, taking words out of context, and attempting to redefine them in view of the cited references. All elements of the claims are not being interpreted in view of the specification or even in view of the other portions of the same claim.

Therefore, because the cited references clearly do not support the obviousness rejection, Applicant respectfully requests that the rejection of Claim 1 and the claims that depend therefrom be withdrawn.

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(b) Claims 20, 31, and 42-43. The rejection of independent Claims 20, 31, and 42-43 appears to rely on the material regarding Claim 1, although a number of these claims recite additional material.

As discussed in relation to Claim 1, the cited references do not add up to the “*data marker integrated device*” as recited by the Applicant. In fact, none of these devices is configured for performing bookmarking of broadcast clips. Still further, because these referenced devices all have direct access to audio databases, there would be no purpose in performing the “*bookmarking*” described by the instant application, because the user has the files in front of them and thus need not “bookmark” them during the broadcast. There would be no need to keep track of what the content is if it is readily available at that moment.

Independent Claim 20 of the instant application describes a series of steps within a method. These steps provide further distinctions over what is recited in Claim 1, and have not been considered by the Examiner in the current rejection.

In particular, a sequence is described in which “*bookmarking*” is performed, then the receiving of that bookmark at a second device, and then the transmitting of the marks to a user account. Now, a separate set of devices is utilized: an internet connection is established between a server and user terminal, and the first and second devices are no longer necessary. Then, information corresponding to the bookmarks is accessed and provided to the user at said user terminal.

Independent Claim 31 describes aspects of the method with some different elements than in Claim 20, and includes specifics about the use of a Bluetooth protocol connection as a first wireless connection and a second communication connection having a longer range.

Independent Claim 42 is similar in structure to Claim 20, but cast in a means plus function format. Like Claim 20, this claim also provides additional distinctions over the cited references.

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Independent Claim 43 is similar in structure to Claim 31, but cast in a means plus function format. Like Claim 31, this claim also provides additional distinctions over the cited references.

Accordingly, the cited references, neither separately nor in combination, disclose all of the elements recited in the above claims. In addition, these references are directed to different objects and operating principles than the instant application; the modifications described would be inconsistent with the objects and operating principles of the inventions. Finally, there is no teaching, suggestion, or motivation found within the references or within the prior art which would incline one of ordinary skill in the art toward attempting such a combination. Additional shortcomings exist because the plain meaning of the claim terms has not been properly considered, the invention has not been considered as a whole, and the invention has been subject to attempts to dissect and assert a gist or conceptual level approach against the references.

Therefore, Applicant respectfully requests that the rejection of Claims 20, 31, and 42-43, and the claims that depend therefrom, be withdrawn and the instant claims allowed to issue.

4. Rejection of Claims 1-27, 30-32, 34-37, and 41-43.

The above group of claims was rejected on the basis of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-18 of U.S. Patent No. 7,127,454 and Claims 1-26 of U.S. Patent No. 7,107,234.

The above group of claims was also rejected on the basis of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-12 of U.S. Patent No. 7,190,971, Claims 1-17 of U.S. Patent No. 7,062,528, and Claims 1-61 of U.S. Patent No. 6,578,047.

A terminal disclaimer is submitted herewith which disclaims the terminal portion of the instant application beyond that of the above-noted patents.

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5. Amendment of Claim 19.

Claim 19 has been amended to overcome a supposed antecedent basis issue as put forth in the rejection. The phrase "*the group of*" was replaced by "*a group of*" within the structure of a Markush group, although Applicant disagrees that this improves readability or understanding of the claim.

6. Conclusion.

Based on the foregoing, Applicant respectfully requests that the various grounds for rejection in the Office Action be reconsidered and withdrawn with respect to the documentation and remarks presented herein, and that a Notice of Allowance be issued for the present application to pass to issuance.

In the event any further matters remain at issue with respect to the present application, Applicant respectfully requests that the Examiner please contact the undersigned below at the telephone number indicated in order to discuss such matter prior to the next action on the merits of this application.

Date: January 28, 2009

Respectfully submitted,



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